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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 NORRIS LAMARR COLQUITT,) No. ED CV 12-01234-VBK
12)
13 Plaintiff,) MEMORANDUM OPINION
14) AND ORDER
15 v.)
16) (Social Security Case)
17 MICHAEL J. ASTRUE,)
18 Commissioner of Social)
19 Security,)
20)
21 Defendant.)
22 _____)
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18 This matter is before the Court for review of the decision by the
19 Commissioner of Social Security denying Plaintiff's application for
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have
21 consented that the case may be handled by the Magistrate Judge. The
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to
23 enter judgment upon the pleadings and transcript of the record before
24 the Commissioner. The parties have filed the Joint Stipulation
25 ("JS"), and the Commissioner has filed the certified Administrative
26 Record ("AR").

27 Plaintiff raises the following issue:

28 1. Whether the Administrative Law Judge ("ALJ") properly

considered Plaintiff's testimony.
(JS at 4.)

This Memorandum Opinion will constitute the Court's findings of fact and conclusions of law. After reviewing the matter, the Court concludes that the decision of the Commissioner must be affirmed.

I

THE ALJ PROPERLY EVALUATED THE SUBJECTIVE SYMPTOM

TESTIMONY PROVIDED BY PLAINTIFF

Following administrative denials of his application for Supplemental Social Security Insurance benefits ("SSI") (AR 124-130), Plaintiff asked for and received a hearing before an ALJ on January 27, 2011. (AR 32-69.) At that hearing, Plaintiff was represented by counsel, and provided testimony. Testimony was also obtained from a medical expert ("ME") and a vocational expert ("VE"). The ALJ thereafter issued an unfavorable Decision. (AR 19-28.) In that Decision, the ALJ considered Plaintiff's testimony regarding his symptoms, but found that the evidence in the record detracted from his credibility. (AR 24.) Plaintiff contends that the ALJ improperly depreciated his credibility.

Plaintiff does not dispute the ALJ's summary of Plaintiff's testimony, which is contained in the following portion of the Decision:

"[Plaintiff] testified that he hears voices, has paranoid thoughts, has difficulty getting along with others and following rules. He also testified that he has panic attacks. He testified that he saw bad things in prison

1 (e.g. fights everyday) and that, now, he does not like
2 people walking behind him and he is triggered if he hears a
3 commotion. ... [Plaintiff] is unsure if he could do a simple
4 repetitive job with not a lot of public contact."

5 (AR 24.)
6

7 Plaintiff correctly asserts that it was the ALJ's obligation to
8 articulate specific and legitimate reasons to reject his subjective
9 testimony, and that in the absence of malingering, the burden
10 increases to clear and convincing. See Smolen v. Chater, 80 F.3d
11 1273, 1281 (9th Cir. 1996); Dodrill v. Shalala, 12 F.3d 915, 918 (9th
12 Cir. 1993). Plaintiff contends that the ALJ did not properly credit
13 his explanation for contradictions between some of his statements and
14 other evidence in the record. As Plaintiff notes, at the hearing
15 before the ALJ, he asserted he feels intimidated during sessions with
16 a doctor with whom he is required to meet as a condition of his
17 parole. In Plaintiff's words, "And there's something in my head that
18 keeps telling me don't trust him, don't talk to him. So basically,
19 while I'm there I just do it -- I just listen." (AR 44.) The ALJ
20 asked Plaintiff whether he had asked his parole officer to assign
21 another doctor to his case. Plaintiff indicated he had not done so,
22 because he felt intimidated to even do that. (AR 44-45.)

23 The principal problem with Plaintiff's argument is that the ALJ's
24 determination as to credibility does not substantially rely upon
25 Plaintiff's statements; rather, the ALJ largely relied upon
26 independent evidence to discredit Plaintiff's claims as to his
27 subjective symptoms. As noted in the Decision, the ALJ considered,
28 for example, statements of Plaintiff's brother which indicate

1 Plaintiff is able to provide for his personal care, do household
2 chores, and use public transportation. (AR 23.) Plaintiff does not
3 claim in this litigation that the ALJ inaccurately summarized that
4 part of his brother's testimony.

5 In addition, the ALJ relied upon her own observations of
6 Plaintiff's demeanor and behavior at the hearing. The A L J t h u s
7 observed that Plaintiff "was able to talk, hear, see, follow the
8 course of the hearing, understand questions, concentrate, and had
9 adequate recall of historical events." (AR 24.) Again, Plaintiff does
10 not dispute the accuracy of the ALJ's observations, or the fact that
11 the ALJ is legally within her bounds to consider a claimant's demeanor
12 at a hearing in evaluating subjective testimony. See Verduzco v.
13 Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999); Nyman v. Heckler, 779 F.2d
14 528, 531 (9th Cir. 1985).

15 While noting Plaintiff's own assessment that he was paranoid,
16 heard voices, and could not get along with people (AR 24), the ALJ
17 considered the objective record and found these claims to be
18 contradicted. For example, the ALJ noted that on July 13, 2009,
19 Plaintiff underwent a mental health evaluation in association with his
20 parole, and at that time, there was no objective evidence of gross
21 impairments in concentration, attention, memory, abstraction or
22 judgment. As the ALJ further noted, during that examination,
23 Plaintiff's behavior appeared organized and his speech was clear,
24 logical, linear, and coherent. (AR 24, citing AR 279.) Indeed, the
25 ALJ reviewed a substantial chronological period of reports documenting
26 Plaintiff's attendance at group sessions in connection with his
27 parole. (AR 24, citing Exhibit 15F.) In a report from March 29, 2008,
28 the observer noted that Plaintiff exhibited no distress; continued to

1 attend anger management classes and reflected on some of the topics
2 learned; was alert and fully oriented; no psychiatric acuity
3 indicators were noted; no suicidal ideations; Plaintiff did not
4 present as an imminent threat to himself or others; and no problems
5 were observed with Plaintiff's mood or thinking. In sum, the observer
6 found that Plaintiff made a "stable presentation." (AR 271.) Plaintiff
7 does not assert that the ALJ was foreclosed from evaluating such
8 objective evidence as a relevant factor in determining the severity of
9 claimed subjective pain and disabling effects. See Rollins v.
10 Massanari, 261 F.3d 853, 857 (9th Cir. 2001).

11 The ALJ cited additional evidence to support her credibility
12 evaluation. In the July 13, 2009 mental health report, the ALJ noted
13 Plaintiff was found to have intellect in the average range; received
14 good grades in high school despite not being enrolled in special
15 education except for possibly mathematics; that he earned a GED; and
16 that he is of average intelligence. Referring again to her
17 observations of Plaintiff at the hearing, the ALJ observed that he was
18 "well spoken with no obvious defects in speech, hearing or
19 understanding." (AR 25.)

20 All in all, it seems abundantly clear that the ALJ only
21 depreciated the credibility of Plaintiff's statements after
22 considering a plethora of evidence in the record which is relevant to
23 the credibility determination. Certainly, the ALJ was not required to
24 believe Plaintiff's allegations. Otherwise, it would be the case that
25 an individual could obtain benefits simply by making disability
26 claims, even if they are contradicted by evidence in the record.
27 While Plaintiff asserts that the ALJ's reliance on these
28 inconsistencies falls short of the clear and convincing standard, the

1 Court does not agree.

2 The decision of the ALJ will be affirmed. The Complaint will be
3 dismissed with prejudice.

4 **IT IS SO ORDERED.**

5
6 DATED: April 19, 2013

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE